

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO
FEB 19 2010

MATTHEW J. DYKMAN
CLERK *JD*

LINCOLN NATIONAL LIFE INSURANCE CO.,

Plaintiff

vs.

Cause No. 08 - mc 15 BB

**A.DAVID SILVER, a/k/a DAVID SILVER, ADS
PARTNERS, LTD., DOE COMPANIES 1 - 10**

Defendant

**MOTION TO DISMISS CAUSE NO. 08 -mc 15 BB WITH PREJUDICE DUE TO
LACHES**

Comes now the Defendant, A. David Silver, *pro se*, and moves all claims, actions, pleadings, and motions of Lincoln National Life Insurance Co. against David Silver, a/ka/a David Silver, ADS Partners, Ltd., DOE Companies 1 -10, including Northern Hills, Inc. due to laches, which Defendant avers as follows:

Argument:

1. In May, 2008, Plaintiff, Lincoln National, submitted twenty-one (21) writs of garnishment and execution against various financial institutions that Plaintiff, by information and belief, thought might be

holding money belonging to Defendant Silver in May, 2008 and then remained silent for approximately twenty (20) months.

2. Now, twenty months later, when Defendant is fighting, like other Americans, to stay afloat, Plaintiff is attempting to collect money on writs of garnishment issued six hundred days ago, when the economy was robust.
3. There is no excuse for the delay. Plaintiff simply put pursuing Defendant on the back burner.
4. The wrong done to Defendant by Plaintiff is now known: Plaintiff loaded up with \$950,000,000 in taxpayer funding, without which, upon information and belief, Plaintiff would have gone out of business and would never have pursued collection actions against Defendant.
5. The prejudice to Defendant is that Plaintiff is permitted to pursue Defendant now that Plaintiff is flush with TARP funding – nearly one billion dollars – and Defendant does not have any taxpayer money with which to defend himself. *State, ex rel. Meyers v. City of Columbus* (1995), 71 Ohio St. 3d 603 and *Garcia v. Garcia*, 111 N.M. 581, 588, 808 P. 2d 31, 38 (1991).

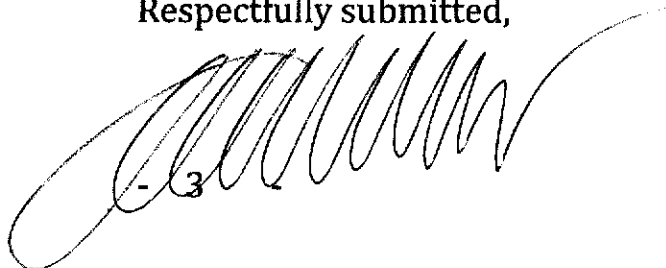
Prayer for Relief:

Defendant prays that the Court will dismiss all of Plaintiff's motions, claims and pleadings and dismiss this case with prejudice because of laches.

Defendant prays that the Court will dismiss all of Plaintiff's motions, claims and pleadings and dismiss this cause of action with prejudice because Defendant has accurately asserted all elements of laches, the most important of which, arguably, is that during the twenty month delay, Defendant was prejudiced when Plaintiff was bailed out of its financial crisis with \$950,000,000 of TARP funding and Defendant did receive equivalent treatment from the U.S. taxpayers.

Defendant prays that the Court will award Defendant reasonable attorneys fees and expenses in defending himself against a Plaintiff that was out of the case for twenty months until it could receive TARP funding, and then invoked the "gotcha" move against Defendant, because its coffers are now overflowing with taxpayer money.

Respectfully submitted,

A handwritten signature in black ink, consisting of a series of loops and flourishes, positioned below the text "Respectfully submitted,". The signature is written over a small, faint, circular stamp that contains the number "3".

David Silver, *pro se*
600 E. Fairview Lane
Española, NM 87532

CERTIFICATE OF SERVICE

A copy of this Motion to Dismiss due to laches was mailed to the following
counsel for Lincoln National Life Insurance Co. at the address below by U. S.
mail, postage prepaid, on February 18, 2010.



David Silver, *pro se*
505-753-0343

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